

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7331 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE PRADIP KUMAR SARKAR

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M P CHAUHAN

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 7331 of 1995

DR SONIA HURRA for Petitioner No. 1

MR SN BHATT for Respondent No. 1

RULE SERVED for Respondent No. 2

MR SN SHELAT for Respondent No. 2

MR KS JHAVERI for Respondent No. 3

NOTICE SERVED BY DS for Respondent No. 3

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CORAM : MR.JUSTICE PRADIP KUMAR SARKAR

Date of decision: 14/08/2001

ORAL JUDGEMENT

1. Present petition has been filed by the petitioner Mr. M.P. Chauhan for a direction on the respondent Government to allow him the benefit of Pension Scheme framed by the Government. The petitioner joined in the service on 20-6-1948 as Demonstrator in Biology by appointment order dated 10-6-1948. Thereafter he was appointed as Professor in Biology from 1-6-1960, and serving in different colleges in the State of Gujarat, the petitioner lastly retired from service from the post of Principal on 20-7-1976. At the time of retirement of the petitioner the C.P.F. scheme was in force and no pension was available to the retired employees. However the State Government subsequently by order dated

15-10-1984 introduced the Pension Scheme for the persons serving in the Government or Non Government Aided Colleges w.e.f. 1-4-1982. Aforesaid order of the Government giving effect of the pensionary benefit for the persons who have retired from service on or after 1-4-1982 was challenged by Professors Association before this Honourable Court, and the said case had been registered as Special Civil Application No. 4449 of 1988. This Court by an order dated 21-8-1990 directed the Government to modify Pension Scheme and to give the benefit to the pensioners who have retired from service prior to 1-4-1982. Accordingly the Government by a notification dated 25-4-1991 extended the pensionary benefits to the persons who have retired w.e.f. 1-1-1973. According to the amended scheme of the Government the petitioner is entitled to get pensionary benefits as he had retired from service on 20-7-1976. However the Government refused to extend the benefit of pension to the petitioner on the ground that he has not exercised the option for the pension scheme within a period of three months from the date of coming into force of the Pension Scheme. The aforesaid decision of the Government was communicated by letter dated 8-2-1995 (Annexure-R) to the petitioner.

3. Learned counsel for the petitioner Dr. Sonia Hurra submitted that the petitioner retired from service on 20-7-1976 and the amended scheme came into force in 1991. During that period the petitioner was residing in Surat district and therefore the petitioner was not aware of the Pension Scheme because the petitioner changed his residence at the relevant time. However, it is contended by learned counsel for the petitioner that no information was given to the petitioner by the department in respect of the pension scheme, and therefore, the petitioner had no scope to exercise the option within the period of three months from the date of coming into force of the scheme. Learned counsel further submitted that, in case of retired employees the time should not be strictly maintained as there may be various reasons because of which one could not have exercised the option in time. It is submitted that, in the instant case the pension scheme came into force 15 years after retirement of the petitioner from service. Therefore, unless he is informed by the department, it is not possible for the petitioner to know about latest Government circulars and orders etc. Accordingly learned counsel submitted that the petitioner should not have been deprived from the benefit of the pension scheme only because of the ground that he had not exercised his option within three months. However the petitioner subsequently exercised his option

and made several representations/ prayers to the Government for extending pensionary benefits to him, but uptill now the petitioner has not been given the pensionary benefits under the Scheme framed by the Government.

4. It appears that the petitioner has been proposed to be deprived by the respondent Government on the technical ground of not exercising the option for the Pension Scheme within the period of three months from the date of coming into force of the Scheme. Since the petitioner was not informed by the office, he should not be blamed, because, in my view, it is the duty of the Government in the department to inform all the beneficiaries of the Scheme who have retired long back and to inform them about the Scheme and if there is any provision for exercising option that should also have been communicated to the petitioner and such other persons. However, in the present case this has not been done. From the amended circular of the Government dated 25-4-1991 it appears that the persons who have retired from service under the CPF Scheme are required to refund the amount of CPF they have received from the Government and on such refund of CPF amount they are entitled for pensionary benefits according to the Scheme of the Government. Since the petitioner has retired from service on 20-7-1976 and he is covered by the Pension Scheme of the Government, I am of the view that the petitioner is entitled to get the pensionary benefits from the respondent Government, subject to the condition that, the petitioner will refund the necessary CPF amount with interest as may be decided by the concerned department in the respondent Government and other refunds if any that are required to be made to get the pension benefits. On such refund being made by the petitioner the respondent Government is directed to finalise the pension of the petitioner under the Scheme framed by the Government, preferably within a period of six months from the date of receipt of this order, and to give pension and other pensionary benefits from the date of his retirement.

5. Before passing this order, I have heard Mr. S.N. Bhatt, learned AGP on behalf of the respondent Government. This petition is accordingly allowed. Rule made absolute to the aforesaid extent. No order as to costs.

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